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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,440

03/16/2007

Philippe Doue

15675P612

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04/28/2009

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EXAMINER

SALMON, DEVIN RAE

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

04/28/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,440	<b>Applicant(s)</b> DOUE, PHILIPPE	
	<b>Examiner</b> Devin Salmon	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/21/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

***DETAILED ACTION***

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-20, drawn to a packaging bag.

Group II, claim(s) 21, drawn to a process for making a bag.

Group III, claim(s) 22, drawn to a machine for manufacturing a bag.

2. The inventions listed as Groups I, II, and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

3. The special technical feature of Groups I, II, and III is a gusset folded back against the bag body where it is removably attached and the gusset having an element for re-closable opening which extends across the fold line of the gusset.

4. Groups I, II, and III are lacking a special technical feature as McGregor discloses a packaging bag that includes at least one gusset (the portion between the fold line and the seal (29)) folded back against a face of the bag body that is characterized by the fact that it includes an element (20) designed to provide for re-closeable opening and which extends across the fold line (see figure below) of the gusset and covers the full width of the gusset and at least a substantial part of the bag body (10) (Figure 1). And

Art Unit: 3782

Zimmer (EP 1321381) discloses a packaging bag that includes at least one gusset (16) folded back against a face of the bag body (10) and held in this position by a detachable connecting element (12). It would have been obvious to one of ordinary skill in the art to combine the detachable connecting element of Zimmer with the packaging bag of McGregor since doing so would provide a way too efficiently and neatly package the excess sidewall material. Therefore, there is no special technical feature that defines a contribution over the prior art common to all the claims.

5. During a telephone conversation with Eric Hyman on April 10, 2009 a provisional election was made without traverse to prosecute the invention of I, claims 1-20.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 21 and 22 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

### ***Double Patenting***

6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

7. **Claims 1-22** are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-22 of copending Application No. 10581439. This is a

Art Unit: 3782

provisional double patenting rejection since the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. **Claims 1-3** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. **Claim 1** recites the limitations "the bag body" in line 2 and "the fold line" in line 6. There is insufficient antecedent basis for this limitation in the claim.

11. **Claim 2** recites the limitation "the whole body of bag" in line 3. There is insufficient antecedent basis for this limitation in the claim.

12. **Claim 3** recites the limitation "the bag body" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Objections***

13. **Claim 2** is objected to because of the following informalities: line 3 should read "the whole body of the bag". Appropriate correction is required.

14. **Claim 3** is objected to because of the following informalities: line 5 should read "elements respectively". Appropriate correction is required.

15. **Claims 4-20** are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim *cannot depend from any other multiple dependent*

Art Unit: 3782

*claim*. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

18. **Claims 1-3** are rejected under 35 U.S.C. 103(a) as being unpatentable over McGregor (US 2004/0114838) in view of Zimmer (EP 1321381).

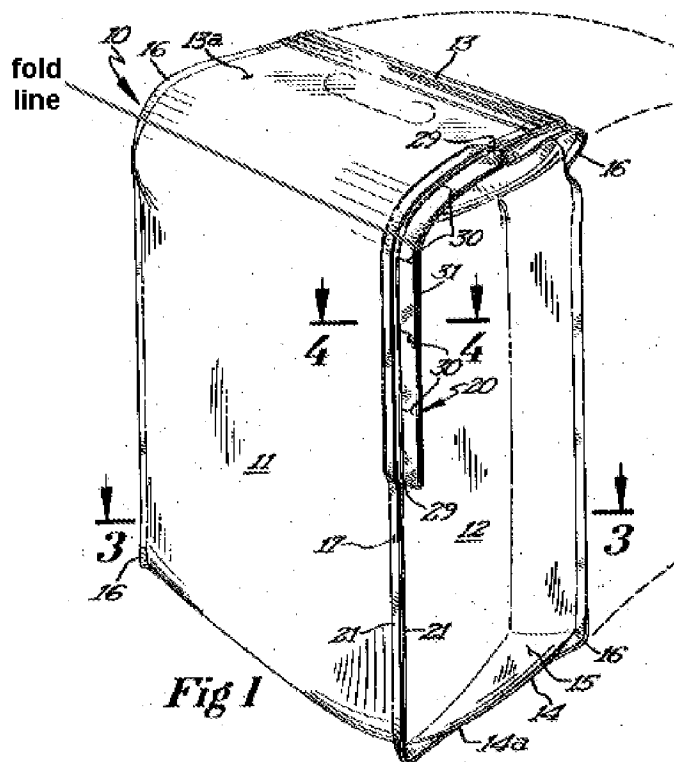
19. **Regarding Claim 1**, McGregor discloses a packaging bag that includes at least one gusset (the portion between the fold line and the seal (29)) folded back against a face of the bag body that is characterized by the fact that it includes an element (20) designed to provide for re-closeable opening and which extends across the fold line (see figure below) of the gusset and covers the full width of the gusset and at least a substantial part of the bag body (10) (Figure 1). McGregor fails to disclose that the

Art Unit: 3782

packaging bag includes at least one gusset held in the folded back position by a detachable connecting element.

20. However, Zimmer discloses a packaging bag that includes at least one gusset (16) folded back against a face of the bag body (10) and held in this position by a detachable connecting element (12).

21. It would have been obvious to one of ordinary skill in the art to combine the detachable connecting element of Zimmer with the packaging bag of McGregor since doing so would provide a way too efficiently and neatly package the excess sidewall material.



22. **Regarding Claim 2**, McGregor fails to disclose that the element designed to provide for recloseable opening covers the whole body of bag in the embodiment of Figure 1.

23. However, In Figure 12 McGregor discloses a packaging bag characterized by the fact that the element (88) designed to provide for recloseable opening covers the whole body of bag.

24. It would have been obvious to one of ordinary skill in the art to extend the recloseable opening of Figure 1 as was done in Figure 12 since doing so would provide a larger access opening to the bag which would facilitate better access to the package interior and allow for larger items to be stored in the bag.

25. **Regarding Claim 3**, McGregor fails to discloses that A bag according to one of claims 1 or 2, characterized by the fact that it includes two gussets (24, 28) folded against diametrically opposite faces of the bag body and held in this position by detachable connecting elements respective (24, 28).

26. However, Zimmer teaches a bag characterized by the fact that it includes two gussets folded against faces of the bag body and held in this position by detachable connecting elements (paragraph [0035]).

27. It would have been obvious to one of ordinary skill in the art that two gussets could be applied to the bag of McGregor and Zimmer since doing so would provide a greater change in the volume of the bag and therefor provide more expansion space when used with compressed articles as was done in Zimmer.



Art Unit: 3782

28. Zimmer fails to state that the gussets are on diametrically opposite faces of the bag body. However, it would have been obvious to one of ordinary skill in the art to locate the two gussets on diametrically opposite faces of the bag body since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

### ***Conclusion***

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roussel (US 5,377,837); Schmidt (US 6,481,183); Bois Henri (US 7,182,512); Bois (US 6,939,281); Edelman et al. (US 2003/0185466); Peppiatt (US 5,080,497); Hill (EP 0 861 791 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devin Salmon whose telephone number is (571)270-7111. The examiner can normally be reached on Monday thru Thursday, 9:30 A.M. to 5:30 P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3782

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devin Salmon/  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782